Supreme Court of the United States

OCTOBER TERM, 1957

No. 34

WILLARD UPHAUS

v.

THE STATE OF NEW HAMPSHIRE

On Appeal from The Supreme Court of The State of New Hampshire

MOTION TO DISMISS

THE STATE OF NEW HAMPSHIRE

BY: LOUIS C. WYMAN, Attorney General

Of Counsel:
DORT S. BIGG

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THE STATE OF NEW HAMPSHIRE

BY: LOUIS C. WYMAN, Attorney General

PRELIMINARY STATEMENT

Appellee, The State of New Hampshire, by Louis C. Wyman, Attorney General, in conformity with Rule 16 of the Rules of this Honorable Court, respectfully submits the following Motion to Dismiss the appeal of Willard Uphaus, Appellant, on the grounds specified in said Motion.

MOTION TO DISMISS

I. No substantial Federal question is involved.

Now comes the Appellee, The State of New Hampshire, by Louis C. Wyman, Attorney General, and respectfully moves that the appeal of Willard Uphaus, Appellant, as more particularly described in the Jurisdictional Statement filed by Appellant with this Honorable Court be dismissed on the grounds that no substantial Federal question is involved.

This case involves the use of the contempt power of the New Hampshire Superior Court for Merrimack County in order to compel compliance by a witness with a subpoena *duces tecum* served upon him by the Attorney General in the course of an investigation of subversive activities in New Hampshire as a legislative committee, New Hampshire Laws 1953 Chapter 307 and Laws 1955 Chapter 197. *Nelson* v. *Wyman*, 99 N. H. 33. By the subpoena in question the Attorney General sought to require Appellant to produce guest registrations in the New Hampshire World Fellowship Center at Albany, New Hampshire for the 1954 and 1955 seasons and to produce "all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics" at the Center during those seasons. Upon Appellant's refusal to comply with the order for the production of the material, he was found and adjudicated in contempt, ordered committed until he should purge himself of his contempt and admitted to bail pending appeal.

There is no substantial Federal question involved in any of the several aspects of this case.

A. No Federal question is presented by the subject matter of the New Hampshire legislative investigation, i.e., subversion against the State Government.

It has long been held that self-preservation is the most essential right of sovereignty. *Gilbert* v. *Minnesota*, 254 U. S. 325, 65 L. ed. 287, 41 S. Ct. 125; *Whitney* v. *California*, 274 U. S. 357, 71 L. ed. 1095, 47 S. Ct. 641; *Gitlow* v. *New York*, 268 U. S. 652, 69 L. ed. 1138, 45 S. Ct. 625; *Dennis* v. *U. S.*, 341 U. S. 494,

95 L. ed. 1137, 71 S. Ct . 857. It is also axiomatic that the government of the United States and that of the several States need not wait until a subversive group has perfected its plans and only the signal to strike remains before taking appropriate action. *Dennis* v. *U. S.*, supra; *Gitlow* v. *New York*, supra. Clearly a State has the right to protect itself from subversion by inquiry of the sort provided by the New Hampshire Legislature, *Wyman* v. *Uphaus*, 101 N. H.——— (decided November 15, 1957); *Nelson* v. *Wyman*, 99 N. H. 33. Fact finding investigation by the State legislature in furtherance of a legitimate end is a valid exercise of an accepted legislative power. *Kilbourn* v. *Thompson*, 103 U. S. 168, 26 L. ed. 377, 13 Otto 168; *McGrain* v. *Daughterty*, 273 U. S. 135, 71 L. ed. 580, S. Ct. 319; *Sinclair* v. *U. S.* 279 U. S. 263, 73 L. ed. 692, 49 S. Ct. 268; *Jurney* v. *McCracken*, 294 U. S. 125, 79 L. ed. 802, 55 S. Ct. 375.

The decision of this Honorable Court in *Pennsylvania* v. *Nelson*, 350 U.S. 497, 100 L. ed. 640, 76 S. Ct. 477 (1956) has no application to this case. That holding was directed at "suspending the enforceability" of *State* laws imposing criminal sanctions on subversive activity directed against the *Federal* government. All that is involved here is the right of a State to *investigate* in aid of legislation. Nothing in *Pennsylvania* v. *Nelson* remotely purports to invalidate State legislative *investigations*. In fact in the Nelson decision this Honorable Court was quite careful to point out that it did not void provisions of State law insofar as they made it a crime in the States to attempt to overthrow the Federal government by unlawful means but merely suspended their enforceability so long as the Federal Smith Act remained on the books. The decision in *Pennsylvania* v. *Nelson* did not seek to invalidate or suspend State laws aimed at sedition or subversion against the *States* themselves. Chief Justice Warren, writing for the majority expressly said:

> "The precise holding of the Court, and all that is before us for review, is that the Smith Act of 1940, as amended in 1948, which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and

violence, supercedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct." 350 U. S. 497, 499.

The case of *Pennsylvania* v. *Nelson* does not preclude the *investigation* undertaken by the Appellee in pursuance of the directive of the New Hampshire Legislature.

With this in mind the decision in *Yates* v. *U. S.*, 354 U. S. 298, 1 L. ed. 2d 1356, 77 S. Ct. 1064, may be seen as not controlling the case at bar. *Yates* arose out of a prosecution for violation of the Smith Act and the reversal of conviction in the lower court revolved primarily around the definitions of certain terms in the Smith Act.

B. *No Federal question is presented in the decision of the New Hampshire Legislature to constitute the Attorney General and his staff a committee to investigate subversive activities within the confines of the State.*

"We accept the finding of the State Supreme Court that the employment of the Attorney General as the investigating committee does not alter the legislative nature of the proceedings. Moreover this Court has held that the concept of separation of powers embodied in the United States Constitution is not mandatory in State government. *Dreyer* v. *Illinois*, 187 U. S. 71, 47 L. ed. 79, 23 S. Ct. 28; . . ." *Sweezy* v. *New Hampshire*, 354 U. S. 234, 1 L. ed. 2d 1311, 77 S. Ct. 1203.

C. *No question is presented here regarding the scope of authority vested in the Attorney General by the New Hampshire legislature nor is there question but that the specific information being sought was in fact desired by the legislature.*

"The legislative history (of New Hampshire laws 1955, Chapter 197) makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions." *Wyman* v. *Uphaus*, 101 N. H. ——— (decided November 15, 1957)

On Wednesday, July 10, 1957, the General Court of New Hampshire under suspension of the Rules adopted by more than a two-thirds vote (275-24 in the House; 16-6 in the Senate) a Resolution to the effect that the General Court authorized the questions put and wanted and continues to want the information which is sought.

"Senate Joint Resolution
relative to interpretation of legislative intent
on subversive activities.

"Whereas, the attorney general has for several years been conducting a fact-finding investigation of subversive activities in New Hampshire for the General Court pursuant to law, and

"Whereas, by the laws of this state the attorney general for these purposes has been found by the Supreme Court of New Hampshire to be a constitutionally delegated legislative committee of this body, and

"Whereas, in the course of the aforesaid investigation one Paul M. Sweezy refused to respond to questions of the attorney general which questions and report thereof was made by the attorney general to this legislature on January 5, 1955, and

"Whereas, in decreeing the questions put to Sweezy were put without authority the United States Supreme Court on June 17, 1957 stated that

> "'The lack of any indications that the Legislature wanted the information the attorney general attempted to elicit from petitioner must be treated as the absence of authority.'

"Now therefore, be it

"Resolved by the Senate and House of Representatives in General Court convened:

"That this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezey by the attorney general acting in this State, authorized these questions, wanted and continues to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court '. . . neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the Legislature wanted to be informed when it initiated this inquiry'".

Laws 1957, Chapter 347.

D. *No substantial Federal question is involved in the demand for the particular information requested by the Attorney General.*

The range of questioning and of information and materials sought is always subject to the requirement of relevancy. *U. S.* v. *Orman*, 207 F 2d 148 (1953); *U. S.* v. *Josephson*, 165 F. 2d 82 (1947); *Rumely* v. *U. S.*, 345 U. S. 41 (1953); *Barenblatt* v. *U. S.*, 100 App. DC 13, 240 F. 2d. 875; *McGrain* v. *Daugherty*, 273 U. S. 135 (1927); *In re Chapman* 166 U. S. 661 (1897). See: 33 B. U. Law Review 337 (1953) Liacos, "Rights of Witnesses Before Congressional Committees."

The relevancy of questions asked by an investigating committee is not to be determined solely by the standards applicable at the trial of issues in court "because of the scope and purpose of (legislative) investigations, pertinency . . . is necessarily broader than relevancy in the law of evidence." *U. S.* v. *Orman*, 207 F. 2d 148, 153. If the question asked or material sought is directed at a possible answer which would be reasonably concerned with the main object of the investigation, it is relevant. *U. S.* v. *Orman*, supra at 154; see also *Sinclair* v. *U. S.*, supra at 299.

The State Supreme Court in the instant case found the information sought by Appellee's subpoena of the guest registration list and the correspondence with or concerning speakers at the Center was clearly relevant to the legislative inquiry. *Wyman* v. *Uphaus*, 100 N. H. 436. In so holding the State court did not, as implied by Appellant's Jurisdictional Statement, Page 8, rely wholly upon the fact that Appellant and some of his guest speakers were members of organizations on the U. S. Attorney General's List of Subversive Organizations. On the contrary, the State Supreme Court in the instant case carefully considered the question of relevancy in the light of considerable information concerning the Appellant, his guest speakers, and the World Fellowship Center in general, produced by the Attorney General and concluded that "we believe this contention (that the guest list and the correspondence did not contain any information bearing on the subject of the investigation) so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Atforney General and the law applicable to the same." *Wyman* v. *Uphaus*, supra at 494, citing *Flaxer* v. *U. S.*, 235 F. 2d 821; *Marshall* v. *U. S.*, 176 F. 2d 473; *Morford* v. *U. S.*, 176 F. 2d 54.

It is important to observe that the bulk of the evidence relied upon by the New Hampshire Supreme Court in arriving at this decision was taken directly from Appellant's own testimony. Even a cursory examination of this testimony will reveal unmistakable indications of the probable presence at World Fellowship, Inc., of persons with exactly such information as the legislative inquiry so obviously seeks.

The fact that here the information is sought by the means of subpoena *duces tecum* does not alter the case to constitute an unreasonable search and seizure, nor does it change the pertinent nature of the information requested. The subpoena *duces* became necessary only after the witness refused the information by oral question and answer.

In *Application of Linen Supply Co.* 15 F.R.D. 115, District Judge McGohey had before him the objection of the appellant to a grand jury subpoena in an anti-trust investigation. In dis-

cussing the question of reasonableness of subpoenas generally, McGohey, Jr., stated at page 118:

> "The questions of reasonableness as to the period and subjects covered by the subpoena are interrelated and will be considered together. A subpoena duces tecum must be limited to a reasonable period of time and specify with reasonable particularity the subjects to which the desired writings related. It can be readily agreed that as the time period lengthens so must the particularity increase. Some courts have set ten years as the outside limit and some have quashed subpoenas covering even shorter periods of time. In other cases, however, because of peculiar facts, courts have sustained subpoenas covering much longer periods of time. In all these cases it is recognized that the facts in each individual case are the determining factors. More important than the formal results in these cases are the tests and extent of the investigation; the materiality of the subject matter to the type of investigation; the particularity with which the documents are described; the good faith of the party demanding the broad coverage; a showing of need for such extended coverage. I think these subpoenas meet these tests."

The subpoenas before this Honorable Court each cover only a period of less than one year preceding their issuance. They are limited to the summer season and activities of World Fellowship, Inc. of which Appellant is the executive director. They call for names of registrants and a guest registration list which is in existence in readily available form on 3" x 5" cards. (R. 38, 1, 17). Correspondence called for by the subpoena is particularly described as being that between the executive director and persons who participate as leaders of discussions, panels, or principal speakers at World Fellowship, Inc. over a period of but a few weeks. Nothing in the subpoena is unreasonable as to time, place or persons.

See Annotations: 58 A.L.R. 1263
" 58 Am. Jur. "Witnesses" ss. 20, 21, 25
" 70 C.J. 50, "Witnesses" s. 37

II. **The case of Sweezy v. State of New Hampshire is not controlling.**

Sweezy v. *State of New Hampshire*, 354 U. S. 234, 253, 254, 255, 1 L. ed. 2d 1311, 77 S. Ct. 1203, was decided on the basis that

> "The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the Attorney General to gather the kind of facts comprised in the subjects upon which the petitioner was interrogated."
>
> "The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from the petitioner must be treated as the absence of authority. It follows that the use of the contempt power, notwithstanding the interference with Constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment."

If any question ever existed as to whether or not the Attorney General's inquiries were directed towards the information desired by the New Hampshire Legislature that question was specifically answered on Wednesday, July 10, 1957 when the General Court of New Hampshire adopted by more than two-thirds vote the resolution which appears supra at Page 5. If it be contended that this resolution operates retroactively it is nevertheless, incontrovertible evidence of the intention of the Legislature with regard to the principal inquiry. The authority of the committee (Attorney General) is a continuing matter (New Hampshire Laws 1957, chapter 347) and the General Court has specifically directed that it "continues to want" such information.

The New Hampshire Supreme Court in this connection stated. "The Legislative history makes it clear beyond a reasonable doubt that it (the Legislature) did and does desire an answer to these questions. Laws 1957, chapter 347, approved Ju. 11, 1957. We believe that the Legislature was entitled to the information sought." *Wyman* v. *Uphaus*, 101 N. H.—(decided November 15, 1957).

After the decision of the District of Columbia Court of Appeals in *Barenblatt* v. *U. S.*, 100 App. D. C. 13, 240 F. 2d 875 (1957) this Honorable Court ordered the court below to reconsider its decision in the light of the *Watkins* and *Sweezy* cases. (*Barenblatt* v. *U. S.*, 354 U. S. 178, 1 L. ed. 2d 1533, 77 S. Ct. 1392) This procedure was followed in this case. After such reconsideration the District of Columbia Court of Appeals in a well reasoned decision (*Barenblatt* v. *U. S.*, CCADC January 16, 1958) held that *Watkins* and *Sweezy* were not controlling. The New Hampshire Supreme Court arrived at the same conclusion in the principal case.

Here there is no vagueness in the Resolution nor its basic law. *Cf.*, *Watkins* v. *United States*, 354 U. S. 178, 1 L. ed. 2d 1273, 77 S. Ct. 1173. The New Hampshire Subversive Activities Act of 1951, New Hampshire Revised Statutes Annotated Chapter 588, is patterned on the Ober Act in Maryland and is most carefully drafted state legislation. Nowhere is there any issue similar to that in *Weiman* v. *Updegraf*, 344 U. S. 183, 97 L. ed. 216, 73 S. Ct. 215, wherein a State sought to attach criminal penalties to innocent and unknowing conduct. Fact finding is not prosecution, nor is it nor has it been here persecution. The witness is not a criminal defendant except insofar as there has been a refusal to answer relevant questions, which was a contempt of the Superior Court and not of the committee.

Here, too, the witness knows perfectly well what the Legislature is talking about in its basic legislation and what it is investigating pursuant to resolution. The presence or absence of subversive persons or subversive organizations or subversive activity is the subject matter of investigation—in short, whether World Fellowship, Inc. is a subversive organization—a subject that everyone

is quite familiar with in the State of New Hampshire i. e., does it have for one of its purposes "to engage in or advocate, abet, advise or teach activities intended to overthrow, destroy or alter . . . (The Government of the United States or of the State of New Hampshire or either of them) RSA 588:1. There is here no reason to invoke a concept of explanation to the witness as a condition precedent to question and answer. This is self-evident when the basic law of New Hampshire with its clear-cut and precise definitions is compared with the general term of "un-American activities". Cf. *Watkins* v. *U. S.* 354 U. S. 138 1 L. ed. 1273 77 S. Ct. 1173.

The instant case may be sharply distinguished from *Watkins* v. *U. S.* supra. There, this Honorable Court held that in order to support a conviction under a statute punishing refusal to answer pertinent questions of a Congressional Committee, the interrogator must state for the record the subject under inquiry at that time and indicate the manner in which the propounded questions are pertinent thereto. In the principal case Appellee took great pains to state for the record both the subject under inquiry and the manner in which propounded questions were believed to be pertinent. See, *Record of Reserved Case*, pages 13, 14, 15, 26, 27, 28, as well as *Transcripts of Hearing in Executive Session* on June 3, 1954 and August 31, 1955.

Moreover, the decision in the Sweezey case fundamentally differs from the one presently at bar in several basic respects. This case does not concern itself with the classroom. Nor does it touch in any way the academic freedoms. This case is concerned merely with the production of certain correspondence and a guest registration list of Appellant's public camp. In this connection it is worthy of note that since 1927 a provision has been in force in the State of New Hampshire specifying as follows:

> "All hotel keepers and all persons keeping public lodging houses, tourist camps, or cabins shall keep a book or card system and cause each guest to sign therein his own legal name or name by which he is commonly known. Said book or card system shall at all times be open to the inspection of

the sheriff or his deputies and to any police officer." New Hampshire Revised Statutes Annotated Chapter 353, section 3.

For thirty-one years this statute has been on the books in New Hampshire and undoubtedly similar provisions are in force in most of the forty-eight States. No one during that entire period has seriously questioned the constitutionality of this rather innocuous law clearly in the public interest. Certainly if any power were within the scope of a simple police regulation this is such a power. Any deputy sheriff or local police officer is entitled to the same information as that sought by the Attorney General of the State of New Hampshire acting in pursuance of a direct order of the entire legislative assembly of that State. We are thus faced with appellant's extreme proposition asserting a requirement of proffering to those who seek to subvert and overthrow our constitutional government, immunity from the simplest, most basic of police regulations.

The information sought by the Attorney General (committee) here deals with a group of persons connected with an organization which the Appellant described in high-sounding, self-serving terms (*Wyman* v. *Uphaus*, 100 N. H. 436, 438) but the true exact nature of which is the very point under investigation by New Hampshire. Information in the hands of the Attorney General set forth in the record (Pages 13, 14, 15 and others) clearly indicates that the World Fellowship Center, Inc. was in all probability a breeding ground of the precise type of individual activity at which the New Hampshire Legislature aimed its investigation. The Court is not bound to accept the statements of the Appellant characterizing his activities and the organization in question.

> "The defendant's denial that he advocated, taught, or in any way furthered the aim of overthrowing constitutional government by force or violence in his lecture, is simply his determination of that fact, which the committee could believe or not as it saw fit. The witness could not by his answer impose upon the investigating committee the burden of

producing evidence that a doctrine aimed at the violent overthrow of existing government was in fact advocated by him before it could inquire of him concerning the lecture." *Wyman* v. *Sweezy*, 100 N. H. 103, 108.

The use of contempt power of the State Superior Court in this situation is appropriate and apt. Although liable to abuse, contempt power is essential to the protection of the courts in the discharge of their functions. Without it judicial tribunals would be at the mercy of the disorderly and violent who respect neither the laws enacted before the vindication of public and private rights nor the officers charged with the duty of administering them. *Ex parte Terry*, 128 U. S. 289, 313 (1888); 12 Am. Jur., *Contempt*, §40; 17 C.J.S. *Contempt*, §§43, 106, 109.

CONCLUSION

This case is essentially very simple. *Subpoenas duces* by a legislative committee seeking names and correspondence have been held by the State's highest court to be relevant and pertinent. In no manner does the information called for involve an unreasonable search and seizure, an unwarranted invasion of any right of privacy, nor suppress freedom of speech, assembly or association, directly or indirectly.

The record—which includes all transcripts of testimony by appellant in the state investigation and all materials incorporated therein by reference, as well as the transcript of proceedings before the Superior Court on January 5, 1956—shows on its face at least the following:

1. That the witness, Willard Uphaus, has been a member or sponsor of many organizations which persons in positions of responsibility in the United States have believed to be Communist dominated, Communist infiltrated or Communist controlled, and hence subversive within the language of the New Hampshire statute under which the present subpoenas were issued. (For these purposes it is be-

lieved irrelevant that such "citation" by the United States Attorney General or the House Committee on Unamerican Activities may have been without notice and hearing to the organization involved, inasmuch as no reliance is placed on such citation here except to show the need for investigation to see whether there is or has been subversion at World Fellowship, Inc.)

2. That the witness Uphaus by his own testimony did not know whether many of the individuals attending World Fellowship, Inc. during 1954 and 1955 were presently or had been in the past members of the Communist party and or members of organizations cited as subversive and Communist controlled and never inquired into their "political affiliations" (Reserved Case, 53:41).

3. That the correspondence requested for the year 1954, for example, is narrowed to perhaps twenty or less persons (Reserved Case, 44:24) and the registration cards, including probably less than three hundred persons in each year, are 3 x 5 and readily available in a small packet (Reserved Case, 54:2).

4. That there are files of correspondence with persons invited to speak at World Fellowship, Inc. which the witness recognized as under *subpoena duces* "regardless of whether the correspondence was with (a person who) . . . was or was not a Communist (Reserved Case, 34:9).

5. That among those whom the record shows attended and spoke at World Fellowship, Inc. were William Hinton, Dirk Struik, Julian Shuman, John Pratt Whitman, Florence Luscomb, Janet Sharp, Anne Winston, Carl Ryan, Thelma Dale, J. Franklin Pineo, Ruth Crawford, Richard Morford, Mary Jane Keeney, Helen and Scott Nearing, etc., many of whom have substantial public records of membership in organizations repeatedly cited as subversive or Communist controlled.

It is curious that all of these persons, and others, should have and have had an affinity to and meet at World Fellowship, Inc. The General Court is concerned to find out whether there was subversion or mere dissent at World Fellowship, Inc.

Neither New Hampshire nor any state should be prohibited from such responsible inquiry under the aegis of the judiciary and confined to relevant and pertinent questioning. A call for information extending to names and correspondence with speakers, some of whom, on information and belief, are shown by the record to have probably, and certainly possibly, been then or formerly Communists, is of obvious pertinence to a directive to investigate and report concerning the presence or absence of subversive persons or subversive organizations within the State of New Hampshire. Is World Fellowship, Inc. a legitimate, if controversial, meeting place for radicals, dissenters and dreamy-eyed visionaries, all assembling within the Bill of Rights, or is it a incubation spot for subversion, intrigue and potential espionage and sabotage against the United States and the State of New Hampshire? This question is under investigation by the State. The State is rightfully concerned. In seeking to find the facts, the New Hampshire General Court has met repeately the willful, deliberate and contumacious contempt of Willard Uphaus, who refuses to produce even the names of the guests attendant there during the years in question.

Claims of conscientious objection, allegations of religious freedom and innuendos of persecution and harrassment cannot becloud the basic fact that "political privacy" in America does not and should not include privacy of subversion nor license to conspire against the security and safety of State or Nation.

The New Hampshire Supreme Court has found legislative intent that the information requested by these subpoenas is wanted by the General Court. It has also found that it is pertinent and relevant. On these facts, where the scope of authority vested in the delegated committee has been approved by both State and United States Supreme Courts; where *Pennsylvania* v. *Nelson* supra most certainly does not extend to *investigation* in aid of legislation as distinct from prosecution; where neither suppres-

sion of free speech nor free association nor unreasonable search and seizure is involved; and where the activity under investigation is so clearly related to a vital concern of the sovereign State of New Hampshire at this particular stage of world affairs, it is clear that no substantial federal question is presented by the request for the pertinent information called for by the subpoenas.

A final word in respect to the "suggestions" of appellant's counsel at page 13 of their jurisdiction statement with respect to summary *vacatur* and the continuing "effect" of appellee's action upon appellant and "others in New Hampshire."

If any summary action is warranted by this record, it is a summary dismissal of the appeal and not vacation of the State's Supreme Court decision. Such things as those presently involved are a major concern of any state. Assume, *arguendo*, that Federal authorities are inclined neither to investigate nor prosecute and assume, further, that there is subversion contemplating incitement to the commission of overt acts against the security of state and nation at World Fellowship, Inc., Cf *Yates* v. *U. S.*, 354 U. S. 298, 1 L. ed. 2d 1356, 77 S. Ct. 1064 can it be reasonably said that the legislature of the state in which such activity takes place may not investigate? The purpose of such an investigation is to determine whether legislation is necessary or desirable. It is not beyond the bounds of possibility that the state legislature might wish to legislate concerning World Fellowship, Inc. It is possible that the legislature might wish to afford such a corporation an opportunity for notice and hearing on the issue of dissolution of its charter as a voluntary corporation in the event that it is found to be substantially controlled or dominated by persons who themselves are subversive or urge, aid or harbor known subversives. *Surely a State is not required by the Federal Constitution to await the putsch within its borders if its legislative body is not so inclined. In matters of survival there is and can constitutionally be no paramount interest in the federal government in respect to State security.*

The innuendo implicit in the "continuing effect of appellee's action upon appellant and others in New Hampshire" suggests some kind of authoritative monster brandishing the club of con-

formity over intellectual interchange of ideas. Nothing could be farther from the truth. A review of the record in this case will show again that the witness has been questioned in a courteous manner. It will show that there has been no attempt to characterize the witness nor to force him to say or believe something different than his personal convictions. As was said before the Superior Court and as appears in the transcript of the reserved case at page 28, "there is no charge made at this point in the proceeding that Willard Uphaus is subversive," and at page 16, The Committee (Attorney General) stated:

> "I know and I respect Mr. Uphaus' disinclination to be an informer. Many people have felt that way from the time they were little children, and it is taught to you as an American when you are growing up, but in this situation the freedom of speech which has been sacrosanct for years in our Bill of Rights is modified because of the fact that the state is trying to find out if there is any subversion around. He says that he is not pleading self-incrimination. He says that he is not a Communist; yet there is a record of his association with persons and organizations which is replete with Communist activities throughout the years. . . ."

Appellant has never been confined. An order that appellant stand committed until purged of contempt is in conformity with settled practice over the years. Such orders are constantly made in equity proceedings. They are peculiarly apt to the situation presented to the New Hampshire Supreme Court on January 5, 1956, by respondent's willful contumacy. Appellant in any such formula holds the key to his own dilemma. He is not being forced to talk himself into jail nor into a prosecution. He has never claimed the privilege against self-incrimination. It is unreasonable to give credence to assertions that a claim of stigma attaches which is in the nature of an odium. If there is any stigma here it is directly attributable to appellant's own activity, to his own free choice in life and to an unlawful and unreasonable defiance of the General Court of the State of New Hampshire.

Given a pertinent and relevant question in pursuance of an investigation under constitutional mandate, a witness has but two alternatives, with or without advice of counsel. First, to refuse to answer, claiming his personal privilege against self-incrimination if, in his honest opinion, a truthful answer might incriminate him or perhaps to expose him to the risk of prosecution or, second, answer the question. To extend the first amendment in limitation on answers to pertinent questioning in the field of sedition, subversion, conspiracy, espionage, sabotage and treason, is to give judicial sanction to palpable subterfuge genuinely obstructing in unnecessary and unreasonable fashion the legitimate efforts of government to keep abreast of subversion within the greatest free Republic remaining in the world. *By American law the life of every citizen on issues of loyalty and security should be an open book, subject always to his right to take the fifth and not the first amendment.*

Appellee respectfully moves this Honorable Court to dismiss appellant's appeal for want of any substantial, vital question in this particular case.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By LOUIS C. WYMAN
Attorney General

Of Counsel:

DORT S. BIGG

March 4, 1958

APPENDIX

Chronology of Events

1. Appellant first questioned in Executive Session,	June 3, 1954
2. Subpoenas served,	September 10, 1954
3. Appellant refused to produce the documents called for by the subpoena,	September 27, 1954
4. Appellee filed a petition in the Superior Court of Merrimack County to enforce the subpoenas	October 20, 1954
5. Appellant appeared again in Executive Session and again refused to comply with the subpoena,	August 31, 1955
6. Supreme Court of New Hampshire decided a jurisdictional issue in favor of Appellant, (*Wyman* v. *Uphaus*, 100 N. H. 1)	September 28, 1955
7. Petition to Superior Court of Merrimack County brought by Appellee pursuant to Chapter 491, sections 19 and 20 of the New Hampshire Revised Statutes Annotated in order to compel Appellant's compliance with the subpoenas. The case was heard,	January 5, 1956
8. Appellant adjudged in contempt and ordered committed to the Merrimack County Jail until purged of contempt; released on bail,	January 5, 1956
9. Appellant appealed to Supreme Court of New Hampshire which upheld the court below (*Wyman* v. *Uphaus*, 100 N. H. 436)	February 28, 1957

10. Appellant appealed to the United States Supreme Court which vacated the judgment below and remanded the case back to the New Hampshire Supreme Court, October [illegible], 1957

11. Upon Appellee's motion for reinstatement of the judgment against Appellant the New Hampshire Supreme Court reaffirmed its former opinion (*Wyman* v. *Uphaus*, 101 N. H.——) November 15, 1957

12. Appellant appealed to the United States Supreme Court filing a Jurisdictional Statement, February 8, 1958